IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JAIPUR BENCH, JAIPUR.

O R D E R

Kailash Chand Kamal
Versus
J.D.A. Appellate Tribunal and ors.

S.B. CIVIL WRIT PETITION NO.5640/2003.

Date of Order : 6/4/2007.

PRESENT
**HON'BLE MR.JUSTICE MOHAMMAD RAFIQ**

Mr. R.P. Garg for the petitioner.
Mr. A.K. Bhandari for respondents No.1 to 3.
Mr. Neeraj Kumar Tiwari for respondent No.4.

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Under challenge in this writ petition are the orders dt.28/8/2002 passed byu the Deputy Commissioner, Zone B-5, Jaipur Development Authority (in short, 'J.D.A.') and 26/8/2003 passed by the Jaipur Development Authority Appellate Tribunal, Jaipur (in short, 'Tribunal'). By the impugned order dt.28/8/2002, the

Deputy Commissioner, J.D.A. reduced the plot area of the petitioner from 251.69 sq.yds to 125 sq.yds. The learned Tribunal rejected his Reference Application vide order dt.26/8/2003.

Brief facts giving rise to this writ petition necessary for its disposal are that the petitioner secured allotment of a plot measuring 213.8 sq.yds on 12/8/1981 from Chatrapati Shivaji Grah Nirman Sahakari Samiti Ltd., Jaipur (in short, 'Society') in Devi Nagar Colony, New Sanganer Road, Jaipur. It is stated that he deposited regularisation charges @ Rs.95/- per sq.yd. total amounting to Rs.23,911/- and also the lease money of Rs.4783/- on 10/4/2002. Since there was some surplus land adjoning his plot, the J.D.A. issued a patta in his favour for a plot measuring 251.69 sq.yds.on 15/4/2002 which also included such surplus land. Suddenly, however the J.D.A. issued show cause notice to the petitioner on

10/7/2002 as to why the patta may not be cancelled. This show cause notice was issued on the complaint of Smt.Mohini Devi, respondent No.4 who claimed that part of the plot for which patta was given to the petitioner was owned by her.

After hearing arguments of the parties and considering their respective written submissions, the Deputy Commissioner J.D.A. passed the order dated 28/8/2002 (Annexure-6) holding therein that there existed a Plot No.448A between Plot Nos.448 and 449 which was allotted in the name of Smt.Mohini Devi, respondent No.4 herein and the patta for the entire land covered by these two plots i.e. 448 and 448A was wrongly issued to the petitioner alone. Patta issued in favour of the petitioner was therefore revised and thereby two pattas, one in favour of the petitioner and another in favour of respondent No.4 in the size of 41 ft. X 27 ft.

7 each were issued afresh.

Aggrieved by the said order dated 28/8/2002 passed by the Deputy Commissioner J.D.A., the petitioner filed a Reference Application before the learned Tribunal which by its judgment dated 26/8/2003 upheld the order of the Deputy Commissioner J.D.A. dated 28/8/2002. This is how now the petitioner is before this Court challenging the aforesaid two orders dated 28/8/2002 and 26/8/2003, Annexure-6 and Annexure-7, respectively.

I have heard Mr.R.P. Garg, learned counsel for the petitioner, Mr.Ajeet Kumar Bhandari, learned counsel for respndents J.D.A. and Mr.Neeraj Kumar Tiwari, learned counsel for respondent No.4, Smt.Mohini Devi.

Mr.R.P. Garg, learned counsel for the petitioner argued that the Society allotted plot to the petitioner in Devi Nagar, New Sanganer Road, Jaipur on 12/8/1981 in

the size of 213.8 sq.yds. The J.D.A. did not have any authority to reduce the size of his plot. Prior to regularisation of the allotment, competent authority in the J.D.A. conducted survey and found the petitioner to be in possession of the land measuring 213.8 sq.yds. It was found that a small piece of land was situated between the Plot No.448 and Plot No.449. Considering this as strip of land, the J.D.A. allotted the same to the petitioner by issuing patta of 251.69 sq.yds. in his favour. The Petitioner accordingly deposited the regularization charges. It is submitted that on the basis of the patta issued to him by the J.D.A., the petitioner secured Home Loan from I.C.I.C.I. Home Finance Co.Ltd. (ICICI Bank) and duly constructed a house. Hence, the J.D.A. is now estopped from reducing the size of the plot of the petitioner. It is further submitted that the J.D.A. as also the learned Tribunal

have proceeded on the unfounded presumption that the petitioner secured patta by concealing certain facts. There was no basis for entertaining such a view. Size of the plots in Devi Nagar Colony, New Sanganer Road, Jaipur in the Scheme of the Society was not less than 200 sq.yads. and there was no plot in the size of 120/125 sq.yds. as alleged. So, there was no question of there being a plot by the Number of Plot No.448A in the size of 120.55 sq.yds. Respondent No.4 has by manipulation secured the revised site plan of the Society which artificially shows the existence of Plot No.448A. It is submitted that now at this stage, if the petitioner is required to part with half of the land, that might result in demolition of his house which will be too harsh to the petitioner. The orders passed by the Deputy Commissioner J.D.A. and the learned Tribunal are illegal inasmuch as, contrary to the provisions of the

J.D.A. Act. Such orders are, therfore, liable to be quashed and set-aside.

On the other hand, Mr.A.K. Bhandari, learned counsel appearing for respondents-J.D.A. has opposed the writ petition and argued that the petitioner secured patta from the J.D.A. by concealing vital informations. It is submitted that the original site plan submitted by the Society was revised and in the revised site plan Pots No.448 and 448A each having the size of 38.9 ft. x 28.6 ft. were shown. Behind these plots, Plot No.483 and Plot No.483A having the same size have been shown. In the list of members submitted by the Society, the name of petitioner was indicated at Sr.No.458 as the allottee of Plot No.448. Similarly, name of respondent No.4, Smt.Mohini Devi was indicated at Sr.No.459 as the allottee of Plot No.448A. It was emphatically denied that Plot No.448A was nowhere in existence or there was

any manipulation in preparing the revised site plan of the Society. Learned counsel for the respondents-J.D.A. referred to the orignal allotment order issued to respondent No.4 on 3/9/1981 in which Plot No.390 admeasuring 213.8 sq.yds was allotted to her. When the plot was revised, plot area was reduced in relation to all the allottees. Revised plan issued to respondent No.4 for Plot No.448A has also been placed on record with her reply. Respondent No.4 has also placed on record the list of members as on 31/5/1994 published by the J.D.A. in which the names of both, the petitioner and respondent No.4 has been indicated as allottees of Plot No.448 and Plot No.448A, respectively. In fact, learned counsel for respondents argued that it was the petitioner who concealed all these vital informations from the respondents while procuring Patta for the plot in question in the size of 251.69 sq.yds. which included

the substantial part of the plot of respondent No.4 and thus has illegally secured regularisation of not only his plot but also part of plot owned by respondent No.4. The learned Tribunal has, therefore, correctly upheld the order of the Deputy Commissioner J.D.A. in which interference of this Court is not called for. It is, therefore, submitted that the writ petition may be dismissed.

I have given my thoughtful consideration to the arguments advanced by the learned counsel for the parties and perused the material on record. I have also perused the judgment of the learned Tribunal which infact upheld the order passed by the Deputy Commissioner J.D.A. It reveals therefrom that the learned Tribunal has taken into consideration the original allotments orders issued to both, the petitioner as well as respondent No.4 and has also

perused the original records of the J.D.A. which even included the revised and approved site plan of the Society. The learned Tribunal has observed that in the approved site plan of the Society, behind Plot No.448 and Plot No.448A each having the size of 38.9 ft. x 28.6 ft. Plot No.483 and Plot No.483A were indicated. The learned Tribunal also perused the list of members submitted by the Society to the J.D.A. in which names of the petitioner as also that of respondent No.4 were indicated. The Tribunal also noticed the fact that the impugned-order dated 28/8/2002 was passed by the Deputy Commissioner J.D.A. after due notice to the affected parties and providing them opportunity of hearing and upon considering the report of the Assistant Town Planner who has prepared such report after making a thorough enquiry into the matter.

In totatility of the circumstances, therefore, I

do not find that the conclusions arrived at by the learned Tribunal in the impugned-order, suffer from any such error as may be called an error apparent on the face of record so as to justify interference by this Court in the exercise of its power of judicial review under Articles 226 and 227 of the Constitution of India.

In view of the discussions made above, I do not find any merit in the writ petition. The same is, therefore, dismissed with no order as to costs.

**(MOHAMMAD RAFIQ), J.**

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